Supreme Court of the United States.

JEFFERSON P. CONLEY,
Plaintiff in Error,

AGAINST

THE MATHIESON ALKALI WORKS

BRIEF ON BEHALF OF THE PLAINTIFF IN ERROR.

Statement of the Case.

This is a writ of error to the Circuit Court for the Southern District of New York. The writ was allowed for the purpose of reviewing the question of jurisdiction, which was the only question in the case (fol. 3).

The action was brought in the Supreme Court of the State of New York in March, 1901 (fol. 25).

It is founded upon a contract, made between the defendant corporation, and T. T. Mathieson, which contract was subsequently assigned to the plaintiff in error (pp. 9–14). *The contract was made in the City of New York* (fol. 18). A fact that will have significance later on.

The plaintiff is a citizen of the State of New York. The defendant is a corporation of the State of Virginia.

The plaintiff appeared in the State court for the purpose of removing the cause on the ground of

diverse citizenship (fol. 7). The cause having been removed, the defendant then made a motion in the Circuit Court to set aside the service of the summons, on the ground that the service had not been such as to give the Circuit Court jurisdiction of the defendant (fol. 27).

The motion was supported and opposed by affidavits, to which further reference will presently be made. There was an order of reference to "determine the question of fact, whether the defendant was doing business in this State" (fol. 103).

Testimony was taken (p. 56 *et. seq.*).

There was a report to which the plaintiff excepted (p. 122). The report was accepted, and an order was entered setting aside the service of the summons (fol. 236).

The Court rendered no opinion. The facts upon which decision must turn, will not be found in the Master's report, which presents merely his own conclusion from undisclosed facts, but they will be found in the record. There is no conflict in the evi-evidence.

THE RELEVANT FACTS ARE AS FOLLOWS:

I.—The question turns upon whether the State court had jurisdiction of the action, and of the defendant at the time of the removal, for if it had, the defendant could not after removal object to the sufficiency of the service of process.

Cowley *v.* N. P., 152 U. S., 583.
Empire Min. Co. *v.* Propeller Co., 108 F. R., 900.

II.—The jurisdiction of the State Court in actions against foreign corporations is governed by the following sections of the Code of Civil Procedure:

"SECTION 432. Personal service of a summons upon a defendant, being a foreign cor-

poration, must be made by delivering a copy thereof, within the State, as follows:

1. To the president, treasurer or secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation and the signature of its president, vice-president or other acting head, accompanied with the written consent of the person designated, and filed in the office of the Secretary of State. The designation must specify a place within the State as the office or residence of the person designated; and, if it is within a city, the street and the street number, if any, or other suitable designation of the particular locality. It remains in force until the filing in the same office of a written revocation thereof, or of the consent executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence to some other place within the State by a writing executed by him and filed in like manner. The Secretary of State may require the execution of any instrument specified in this section to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, it is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated nor an officer specified in subdivision first of this section can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein, to the cashier, a director or a managing agent of the corporation within the State."

"SECTION 1780. An action against a foreign corporation may be maintained by a resident of the State or by a domestic corporation for any cause of action. An action against a foreign corporation may be maintained by another

foreign corporation or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State or relating to property situated within the State, at the time of the making thereof."

2. " Where it is brought to recover real property situated within the State.

3. " *Where the cause of action arose within the State*, except where the object of the action is to affect the title to real property situated without the State."

The last quoted section defines the cases in which actions may be brought against foreign corporations. Such an action may be brought by a citizen of the State for *any cause of action*. The plaintiff, Conley, is a citizen of the State, and moreover, the contract was made within the State. The right to sue was then perfect.

Next as to the service of process under Section 432. Neither of the officers mentioned in Subivision 1, could be found. The defendant had neglected to designate a person on whom process might be served, as required by a statute of the State (fol. 81) and, therefore, service could not be made under Subdivision 2. Service was made under Subdivision 3 upon " directors within the State," not temporarily within the State, in fact, resident directors (fols. 86–88).

Wilson and Agar (the persons served), admit that they were directors (fols. 43–46), and residents of New York City (p. 35).

From first to last, there has not been any suggestion either in proof of argument or decision, that the State court had not complete jurisdiction in the premises.

III.—It has never been decided by any Federal court, that, in addition to such a state of facts, the foreign corporation must be actually carrying on

business in the State where service is made, on the contrary, directly the reverse has been held by this Court, and other courts, as will be seen later on. But, if anything depended upon the fact of the defendants doing business in the State, then the following facts show that it was doing business there—was really domiciled there in the most accentuated legal sense.

1. The business of corporations is conducted by its Board of Directors, where they meet and act, the corporation is, in effect, domiciled.

"Directors of a corporation are its principal officers and agents" (Hiller *v.* B. & M. R. Co., 70 N. Y., 226).

A by-law of this corporation provides as follows:

> "The directors, in addition to any other meetings that may be held, shall hold regular monthly meetings at the office of the company in the City of New York, at 12 o'clock noon, on the second Wednesday of each and every month in each year.
>
> "Special meetings of the board may be called at any time by the president when deemed necessary, and shall be called by the president or secretary at any time upon the written request of any three directors.
>
> "At all meetings a majority of the board shall constitute a quorum for the transaction of business" (p. 27).

Under this by-law the directors have carried on the business of the company in the City of New York (p. 73 *et seq.*).

There is no definite evidence of any meetings of the board elsewhere (pp. 70, 71 *et seq.*).

2. From the return of the Sheriff (pp. 44, 45) and the affidavit of Taylor (pp. 48, 49) it appears that

the defendant company, by the usual business signs, announced itself as located at No. 31 Pine Street, New York City, where, among other things, they maintained an office devoted to directors' meetings (fol. 92). Letterheads give the defendant's location and place of busines as "31 & 33 Pine Street, New York" (fols. 89, 90).

3. Elections for officers are held there, and, at the date of the examination, Edwards, whose office is there with R. T. Wilson & Co. (pp. 35, 30–92) was president of the defendant company (p. 72); Edwards and most of the other directors are citizens of the State of New York (p. 35).

4. Extensive financial business is transacted there, through the banking house of R. T. Wilson & Co. (p. 82). Wilson owns over four million ($4,000,000) dollars of the capital stock of the company, of which he appears to have been the promoter (101), and it is sufficiently obvious that the defendant company is merely an appendage of his office.

5. All the products of the defendant are sold through selling agents (fol. 130), Arnold, Hoffmann & Co., of New York (fols. 190, 191; pp. 66, 67). The president of the Alkali Company being also the head of that concern (pp. 77, 68, 75).

6. In 1896, the defendant company established an extensive manufacturing plant at Niagara Falls in the State of New York, and maintained it until December 31, 1900, when it was nominally conveyed to another corporation organized uner the laws of Virginia, by the managers of the defendant company (pp. 35, 64, 67).

The officers of both companies are practically the same (pp. 35, 92, 93).

7. *The Mathieson Company owns all the stock of the Castner Company* (pp. 59, 93, fol. 180).

And through the ownership of the entire capital stock, the defendant owns and operates the Niagara plant just as it did before. The title to the property still exists, it has merely *changed form*, and is now represented by capital stock.

8. The directors of the defendant company hold a majority of the stock in the Mathieson company (fol. 195).

9. It follows from the fact that the defendant company created the Castner Company, and owns all its capital stock, and the fact that the two companies are governed by the same people, and at the same place in New York City, that their interests are identical, and that the defendant company is still, in effect, as much as ever the owners and operators of the Niagara plant.

10. Saltville is a small village in a remote part of Virginia, built and entirely owned by the defendant, and is merely a manufacturing plant (fols. 126, 128). The management of this plant is the only business of the company carried on in Virginia, the legal home of the defendant company. There is a factory there, and employees to operate it, and that is the sole practical relation the corporation has to the State of Virginia.

11. To Providence, R. I., the defendant sustains no sort of legal relation. In point of fact, it happened to be the residence of its one time president, Arnold, now succeeded by a resident of New York, and also the residence of Gladding, secretary of the company, from whose testimony the above recited facts in regard to the defendant's relation to the State and City of New York are taken.

12. The Master's Report is meagre and extremely incorrect. This may be verified by the reference to the record above given. Of this, one illustration

will suffice. Under the order of reference, the real seat of government of the corporation became a subject of inquiry, and that involved the question as to where the Board of Directors resided, met and exercised their functions.

On that point the Master's Report is as follows:

> "A by-law of the company adopted in 1896 provided that the directors, in addition to any other meetings that might be held, should hold regular monthly meetings in the offices of the company in the City of New York on the second Wednesday of each and every month in each year. It did not appear, however, that meetings of the directors had been held in accordance with this by-law, the fact being that they were held sometimes in Saltville and sometimes in Providence, and, during the year 1901 at least, were held not more than two or three times in this city, and then at the branch office of Arnold, Hoffman & Company, the selling agents, or at the office of Messrs. R. T. Wilson & Company, bankers, in Wall street, a member of which firm was a director of the defendant company and one of its principal stockholders."

The only evidence on the point is the testimony of Gladding, which is as follows:

> "Q. Where are the meetings of the directors of this corporation held?
>
> "A. They have been held at various places at different times.
>
> "Q. At what places?
>
> "A. In Providence, in Saltville; sometimes in New York.
>
> "Q. We will take Saltville first. When was the first directors' meeting held there?
>
> "A. I can't remember.
>
> "Q. You do not even know that?
>
> "A. I can't remember.
>
> "Q. And you are secretary of the company?
>
> "A. Yes.
>
> "Q. Have you been notified to produce the minutes of the directors' meetings?
>
> "A. I have not.

"Q. Have you been notified not to produce them?

"A. I have not.

"Q. Will you produce them?

"The Witness: Do you now mean now or when?

"Mr. Macfarland: At the next hearing. Are they here?

"The Witness: They are not here.

"Q. They are in Providence?

"A. Yes, sir.

"Q. Will you produce them at the next hearing?

"A. I would have to do that under the direction of my Board of Directors.

"Q. You will not answer?

"Mr. Ely: You have had your answer.

"Q. When was the first directors' meeting held in Providence?

"A. I don't know.

"Q. How many have been held here?

"A. I don't know.

"Q. Will you swear that one was ever held at Saltville?

"A. Yes, sir.

"Q. In what year?

"A. I don't remember the year.

"Q. Will you swear that two have been held there?

"A. I can't swear as to two. I remember one.

"Q. And you do not even know the year?

"A. I don't know.

"Q. Can't you get within four or five years of it?

"A. Yes, sir.

"Q. What year do you think it was in?

"A. Oh, I should think about four years ago.

"Q. When was your last directors' meeting in Providence?

"A. I don't remember that.

"Q. You do not remember that?

"A. No.

"Q. Have your directors' meetings all been held in New York, with the exception of those that you can remember in Saltville and Providence?

"A. I don't know, because much of the

history of the company is not of my personal knowledge at all.

" Q. You are keeper of the directors' meetings, are you not?

" A. Yes, sir; but I don't always read them for years, before I became an officer.

" Q. Since you became an officer have not the directors' meetings been held in this city?

" A. Have there been directors' meetings held in this city? Yes, sir.

" Q. Have they not all been held here?

" A. No.

" Q. What directors' meetings have been held elsewhere?

" A. I referred to one, in Saltville.

" Q. With the exception of the one in Saltville, have they all been held here?

" A. I am not sure.

" Q. Do you know of any that have been held anywhere else, that you can tell us about?

" A. I think there have been one or two held in Providence. I will not make that as an assertion.

" Q. But you want to be certain?

" A. I won't be certain.

" Q. And you can't tell when?

" A. No.

" Q. When was the last directors' meeting held here?

" A. It was held in October.

" Q. In the present year, October?

" A. Yes, sir.

" Q. Where?

" Mr. Ely: I object to that as since the period covered by the examination.

" The Master: I will allow it and give an exception.

" Exception by Mr. Ely.

" Mr. Ely: I object to any examination which is subsequent to the date at issue in this reference, April 18.

" Mr. Macfarland: Go on, sir.

" The Witness: Where shall I go on.

" Q. Where was that meeting held?

" A. At the office of R. T. Wilson.

" Q. In this city?

" A. Yes, sir.

"Q. Mr. R. T. Wilson is one of the directors, is he not?

"A. Yes, sir.

"Q. All these meetings that have been held in New York have been held at his office, have they not?

"A. No.

"Q. Where else have they been held?

"A. They have been held in the office of Arnold, Hoffman & Company.

"Q. How many have been held there?

"A. I can't say how many.

"Q. When?

"The Witness: When have they been "held?

"Mr. Macfarland: Yes.

"A. At various periods.

"Q. At Arnold, Hoffman & Company's?

"A. Yes, sir.

"Q. But how many times or when you "cannot tell?

"A. I cannot. Arnold, Hoffman & Company's place of business is in the City of New York.

13. Now, there is a presumption that the by-laws have been observed, and that monthly meetings have been regularly called in the City of New York, even if not always attended, and there is not a scintilla of evidence to the contrary. In the next place, there is not a scrap of evidence that a meeting of the board was ever held elsewhere, except one, on some unknown occasion at Saltville.

Of course, the minute books of the board would have shown where meetings were held, but these the defendant refused to produce (pp. 70–75), and this leads to a conclusive presumption, that they were held in the City of New York in pursuance of the by-laws, and not anywhere else, and such is, in fact, the undisputed evidence.

Everything is presumed against those who do not produce books that would show the fact.

Lindley on Partnership, pp. 808, Note; 993.

Assignments of Errors.

I.—The Court erred in overruling the exceptions to the Master's report herein, and in confirming the same in so far as it was found therein and reported; that the business dealings of the defendant corporation with the corporation of Arnold, Hoffman & Co., are carried on through the Providence office of said last named corporation.

II.—The Court erred in overruling the exceptions to said report and confirming the same in so far as it was therein found and reported that the defendant corporation has no office within the State of New York.

III.—The Court erred in overruling the exceptions to the said report and in confirming the same in so far as it was therein found and reported; that the defendant corporation has not since January 1, 1901, sold any of its products within the State of New York.

IV.—The Court erred in overruling the exception to the Master's report, and in confirming the same in so far as it was therein found and reported that it does not appear that the defendant corporation was, at the time of the service of the summons herein, viz., April 18, 1901, doing business within the State of New York.

V.—The Court erred in granting the motion of the defendant to set aside the service of the summons in this action, and declaring such service to be null and void, and of no effect."

Argument.

I.—THIS CAUSE WAS DECIDED BELOW UPON THE ASSUMED AUTHORITY OF GOLDEY *v.* THE MORNING NEWS, 156 U. S., 518.

That case was decided below by the same Judge who granted the motion to dismiss in the present case (42 F. R., 112).

But there is no resemblance, nor the remotest analogy, between the two cases. Goldey *v. The Morning News* was an action for libel against a New Haven printing corporation. The corporation sustained no relation whatever to the State, nor did the cause of action arise therein. Service of process was made upon the president of the foreign corporation, who was temporarily within the State, but who was a citizen and resident of the State of Connecticut. This Court held that the temporary presence within this State of a person who happened to be president of the corporation did not make him sufficiently representative of the corporation as to make the service valid for the purpose of bringing the corporation into court.

The Court said:

> "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has *no residence* within its territorial jurisdiction except by actual service of notice within the jurisdiction upon him or upon some one authorized to accept service in his behalf, or by his waiver, by general appearance or otherwise, of the want of due service. Whatever effect a constructive service may be allowed in the courts of the same government, it cannot be recognized as valid by the courts of any other government."

Further:

> "So a judgment rendered in a court of one State against a corporation neither incorporated nor doing business within the State must be regarded as of no validity in the courts of another State, or of the United States, unless service of process was made in the first State upon an agent appointed to act there for the corporation, and not merely upon an officer or agent residing in another State, and only casually within the State, and not charged with any business of the corporation there."

We have in these paragraphs a precise definition of the case in which service of process will not be regarded by this Court as sufficient to give jurisdiction over the foreign corporation for the purpose of rendering a valid personal judgment. It amounts to this, that where the cause of action against the foreign corporation did not arise within the State, and the corporation was not doing any business within the State, service of process upon an officer or agent only casually within the State, and not charged with any business of the corporation there, is not sufficient.

In all the decisions of the Circuit Court, cited in the opinion against the validity of the service, precisely the same rule is so stated and limited. Thus in Fidelity Trust, &c., Company *v.* Mobile S. T. Ry. Co., it is said, that

> "When a non-resident corporation is not doing business in the jurisdiction, service on the president temporarily present in the district is not effective in Alabama" (F. R., 53, p. 850).

And in Reifsnider *v.* American, &c., Co. (E. D, Missouri), 45 F. R., 433, it is said:

> "No jurisdiction of a foreign corporation which does not maintain an office or transact any business within the State is acquired by service of process on the president thereof, when he is within the State *casually on private business.*"

Carpenter *v.* Westinghouse Company (S. D., Iowa), 32 F. R., 434, is exactly to the same effect.

The same is true of United States *v.* American Bell Telephone Company, 29 F. R., 17.

And also Elgin Canning Company *v.* Atchison, T. & S. F. Ry. Company, 24 F. R., 866.

The Wooden Ware Company *v.* Stem, 63 F. R., 676.

Also Clews *v.* Woodstock Iron Company, 44 F. R., 31.

Goldey *v. Morning News*, 42 F. R., 103.

It is to be noted, that in every one of these cases we have these facts; that the foreign corporation sustained no business relation whatever to the State in which service was made. That the person served was in the State "*casually on private business,*" and that *the cause of action did not arise within the State.* The wildest imagination cannot bring the facts of the present case into any sort of legal relation to the class of cases above mentioned. This is plain enough from a brief recapitulation of a few of the facts mentioned in the statement of the case. The contract was made there; the by-laws of the foreign corporation located it there for all executive business; there the seat of government is established; there the directors meet and act.

As the Court of Appeals says in Hiller *v.* B. & M. Ry. Company, 70 N. Y., 226:

> "Directors of a corporation are its principal officers and agents."

The directors of this corporation who were served with process, were not casually within the State, they were permanent residents, and by the fundamental laws of the corporation, they were obliged to perform their official functions there.

Moreover, the company owns and operates an extensive manufacturing plant within the State of New York, although the nominal legal title to the property is in a subsidiary corporation of its own creation.

In short, a reference to the undisputed facts set forth in the statement of the case, shows very conclusively the intimate business relations of this corporation to the State of New York, where it has always had its real domicile, and conducted all its operations governmental and financial.

It is palpably plain that the line of decisions upon which the decision below was based, are wholly irrelevant. Not one of them has the remotest relation to the state of facts existing in this case. It would be

interesting to know upon what line of reasoning the decision below proceeded, but there was no opinion. Having regard to the practical administration of justice and to settled principles, it would appear to be extremely absurd that a corporation thus situated may make a contract in the State of New York to-day, and to-morrow, in an action in a court of that State founded upon that contract, deny the jurisdiction of the court on the ground that service upon two *resident* directors was not legally efficient to give the court jurisdiction, notwithstanding the statutes of the State expressly declare that it shall be sufficient. It is needless to say that no decision of any Federal or State court affords any support for such a conclusion.

II.—THE WHOLE COURSE OF DECISION, BOTH FEDERAL AND STATE, SUSTAINS THE VALIDITY OF THE SERVICE IN THE PRESENT CASE.

It is true that the construction of a State statute is not always and necessarily binding upon a Federal court. This Court says so in Goldey *v. Morning News, supra.*

See also Tootle *v.* Coleman, 107 F. R., p. 45.

Still, it remains that the decisions of the highest court of a State in respect to the meaning of a State statute should be and they are treated with the greatest respect. It will, therefore, be convenient to refer to those decisions in the first instance. In Tuchband *v.* C. & A. R. R. Co. (115 N. Y., 437), it was held that service upon an agent in charge of a railroad ticket office in the City of New York was sufficient, although the cause of action did not arise within the State, as in the case at bar it did (115 N. Y., 437).

Hiller *vs.* B. & M. R. R , Co. 70 N. Y., p. 223:

This was an action upon a contract for services made in the City of New York. Service of the sum-

mons was made upon a director of the foreign corporation, while he was *temporarily* in this State upon his own business. The defendant had no property in the State. The service was held to be good. The Court says:

> "As a general rule any service will be deemed sufficient which renders it reasonably probable that the party proceeded against will be apprised of the action against him and have an opportunity to defend, and so long as this general rule is not violated by a mode of service prescribed by the Legislature, no constitutional right of the party served is invaded."

This proposition of the head note is stated more at large in the opinion in the following words:

> "Corporations are intangible, incorporeal existences, and service of process upon them can only be made by service upon some one of their agents or officers. The Legislature has power to determine how and upon whom service shall be made. It may determine that service shall be made upon the Board of Directors while in session, or upon any of the executive or administrative officers, directors, or other agents. The object of all service of process is said to be to give notice to the party on whom service is made, that he may be aware of and may resist what it sought of him, and it is a general rule that any service must be deemed sufficient which renders it reasonably probable that the party proceeded against will be apprised of what is going on against him, and have an opportunity to defend (*In re* Empire City Bank, 16 N. Y., 200; Happy *vs.* Mosher, 48 N. Y., 313; Gibbs *vs.* Queens Ins. Co., *supra*). Hence the Legislature of this State has designated the agents of corporations upon whom process may be served. And provisions have been made for the service of process upon natural persons by posting and publication; and notices and citations affecting personal and property rights and interests are authorized in certain cases to be made by publi-

> cation or by mail, or by leaving the notice or citation at the parties' place of residence or office. All these various forms of service have been sanctioned by the Legislature and the courts, *and are absolutely necessary in the administration of justice.* So long as the general rule above laid down as to service is not violated, no party can complain that any constitutional right has been invaded. But where a service is authorized by the Legislature which is not according to the circumstances of the case, to reach the party intended to be affected, and to give him an opportunity to defend, it may be challenged as a violation of the constitutional provision, that no person shall be deprived of his personal rights or property without due process of law, and so long as a party has the benefit and protection of due process of law, as defined by the Courts, he cannot complain that any constitutional right has been invaded."
>
> Pope *v.* Terre Haute Car Manuf. Co., 87 N. Y., p. 139.

The plaintiffs were residents of the State. It does not appear that the contract sued upon was made within the State.

The material facts are stated in the opinion in the following words:

> "It appears that the defendant, being a foreign corporation, had no place of business, and transacted no business, and had no property within this State, and that at the time its president was served he was temporarily within this State for purposes of his own, on his way to a seaside resort, and not in his official capacity or upon any business of the defendant. The claim is, therefore, made that he in no way represented the defendant, and that service upon him could not bind the defendant."

The service was held to be legally good, and the reasons for this conclusion are stated at large in the opinion.

This Court was of opinion that the above decisions of the Court of Appeals would have sustained the validity of the service in the Goldey case. Whether that be so or not (and perhaps there is reason for doubt), it is entirely plain that the facts in the present case do not, as above shown, sustain the slightest relation to the facts in the Goldey case. At the same time, it is entirely plain, that the Court of Appeals would have affirmed the validity of the service in the present case.

III.—AND NOW IT IS PROPOSED TO DEMONSTRATE THAT EVERY DECISION OF THE FEDERAL COURTS UPON ANY STATE OF FACTS AT ALL RESEMBLING THE FACTS OF THE CASE AT BAR, HAS AFFIRMED THE VALIDITY OF SUCH A SERVICE AS WAS MADE IN THE PRESENT CASE.

(1.) Simon *v.* Craft, 182 U. S., p. 427. In that case, which involved a like question as to the sufficiency of the service of process, this Court said (p. 436):

> "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things and not by mere form."
>
> Citing Louisville & Nashville Railroad Co. *v.* Schmidt, 177 U. S., 230.

Applying that rule to the facts, there certainly can be no doubt as to the sufficiency of the service in the present case.

The plaintiff is a citizen of the State; the contract was made therein under the protection of its laws by which its construction and effect are determined. Service was made on resident directors perpetually employed there in the exercise of their functions, as the chief agents of the company. These factors alone bring the case expressly within the terms of the State statute, and more than fulfill its requirements, and it is plain to sense, that they fulfill all

the conditions of the above rule laid down by this Court. Stopping here it may positively be affirmed, that no decision of this Court, or any other has, on *such* a state of facts pronounced the service insufficient to give jurisdiction.

But there is no occasion to stop here, other facts accentuate the legal presence within the State; it is enough to recall but one, the radical fact, that by its by-laws, the corporation elects to establish its business domicile in the City of New York. *In fact it has no other.* Ejected from New York, it would be homeless. Of course, it is absurd to say, that the business of the board, which, by the by-laws, calls for a meeting once a month, could be carried on at their remote Virginia hamlet, the seat merely of one of its factories. It is equally ridiculous to suppose, that the directors could travel off once a month to the residence (whether Providence or San Francisco) of a president or secretary, both of whom are merely its own creatures and temporary agents, subject to its directions in all things. Even they hold their office by appointment in the City of New York, and, as we have seen, there is no record, nor any evidence of any meeting of the board elsewhere than in the City of New York. The concealment and denial of the minute books is a confession, that no meetings were held elsewhere, and that the by-laws were obeyed.

Where, then, does the defendant corporation dwell, if not in the City of New York, its elected domicile? Where else is a creditor to "*find*" it, for the purpose of enforcing a contract made in that city? To send the creditor elsewhere would be a mockery of justice, and a practical denial of any remedy. In many of the decisions cited in this brief such evil consequences of refusing jurisdiction have been pointed out and condemned.

Now, in view of all this, can it be said, that this corporation is not doing business in the State *within the true meaning of the decisions?*

But to return now to the authorities:

(2.) Barrow Steamship Company *v.* Kane, 170 U. S., 100.

In that case the Court held that the Circuit Court of the United States has jurisdiction in an action brought by a citizen and resident of another State against a foreign corporation doing business in the the first State, through its regularly appointed agents upon whom the summons is there served, for a cause of action arising in a foreign country.

Many observations in the opinion are relevant to the case at bar.

On behalf of the steamship company it was argued (p. 105):

> "That the jurisdiction of the courts of the United States held within the State depended on the authority given by those statutes; that the statutes of New York conferred no authority upon any court to issue process against a foreign corporation in an action by a non-resident, *and for a cause not arising within the State;* and therefore that the Circuit Court acquired no jurisdiction of this action brought against a British corporation by a citizen and resident of New Jersey.
>
> "The constant tendency of judicial decisions in modern times has been in the direction of putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them."

Further (p. 107):

> "The manifest injustice which would ensue, if a foreign corporation, permitted by a State to do business therein, and to bring suits in its courts, could not be sued in those courts, and thus, while allowed the benefits, be exempt from the burdens of the laws of the State, has induced many States to provide by statute that a foreign corporation *making contracts within the State* shall appoint an agent residing therein, upon whom process may be served in actions upon such contracts and so on."

It will be observed that here and elsewhere much stress is laid upon the place where the contract was made, and upon the fact of its being made within the jurisdiction in which the action is brought.

Again the Court says (p. 109):

> "Mr. Justice Swayne, in delivering judgment, said: 'If the theory maintained by the counsel for the plaintiff in error be correct, however large or small the cause of action, and whether it were a proper one for legal or equitable cognizance, there could be no legal redress short of the seat of the company in another State. In many instances the cost of the remedy would have largely exceeded the value of its fruits. In suits local in their character, both at law and in equity, there could be no relief. The result would be, to a large extent, immunity from all legal responsibility. It is not to be supposed that Congress intended that the important powers and privileges granted should be followed by such results. But turning our attention from this view of the subject, and looking at the statute alone, and reading it by its own light, we entertain no doubt that it made the company liable to suit, where this suit was brought, in all respects as if it had been an independent corporation of the same locality'" (12 Wall., 83, 84).
>
> "In that case, it is to be observed, the cause of action arose, neither in the State of Maryland, where the defendant was incorporated, nor in the District of Columbia, where the action was brought, but in the State of Virginia. The decision, in principle and in effect, recognizes that a corporation of one State, lawfully doing business in another State, and summoned in an action in the latter State by service upon its principal officer therein, is subject to the jurisdiction of the court in which the action is brought."

(3.) Connecticut Mutual Life Insurance Company *v.* Spratley, 172 U. S., p. 602, the head note is as follows:

> "In a suit in a court against a foreign corporation where no property of the corpora-

tion is within the State, and the judgment sought is a personal one, it is material to ascertain whether the corporation is doing business within the State; and, if so, the service of process must be upon some agent in the State so far representing it that he may properly be held in law its agent to receive such process in its behalf."

"A foreign insurance company which has been doing business within the State through its agents does not cease to do business therein when it withdraws its agent and ceases to obtain or ask for new risks or obtain new policies, while, at the same time, its old policies continue in force and the premiums thereon are paid by the policyholders to an agent residing in another State, who was once the agent in the State where the policyholders reside."

The decision would appear to be decisive of the present case. The company had made a contract of insurance in the State through an agent and afterwards withdrew its business, but here not only was the contract made within the State, the corporation actually *lives there*, and from thence carries on all its business everywhere, including its extensive factory at Niagara Falls, which it owns and operates under another name as we have seen.

The statutes of the State of Tennessee in respect to the service of process in such cases was substantially like the statute of New York.

A policyholder having died after the company had withdrawn its business from the State, it sent an agent to Memphis to investigate and adjust the claim. This Court held that service of process upon that agent was sufficient, and by a course of reasoning distinctly applicable to the case at bar. Again, stress is laid upon the fact that the contract was made in the State of Tennessee. At the same time the Court will not fail to notice that the facts of the present case are infinitely stronger in favor of the process than those in the case cited.

(4.) Henrietta Mining and Milling Company *v.* Johnson, 173 U. S., p. 221, and

Societe Fonciere et Agricole des Etats Unis *v.* Milliken, 135 U. S., p. 304, are to the same effect. In both the Court finds the rule of decision in the proper construction of the State statute.

(5.) It is needless to add, that, if a State statute does not deny to the defendant due process of law, it is binding upon the Federal Court.

In Cowley *v.* Northern Pacific Railroad Co., 159 U. S., p. 583. This Court said:

> "The case having been removed to the Circuit Court upon petition of defendant, it does not lie in its mouth to claim that such Court had no jurisdiction of the case, unless the Court from which it was removed had no jurisdiction."

In Tootle *et al. v.* Coleman *et al.*, Fed. Rep. 107, p. 41. It is said (referring to the validity of the service of process):

> "It follows from this conclusion that if the State Court obtained sufficient jurisdiction of the subject of this action * * * It does not lie in the mouth of one who has removed a case from the State to the Federal Court to claim that the latter has no jurisdiction of the case, except upon the ground that the Court *from* which it was removed was without jurisdiction."

Similarly in Purdy *v.* Wallace, Muller & Co., Limited, Fed. Rep. 81, p. 513. It is said:

> "When a suit commenced in the State Court by attachment is removed into a Federal Court before the proceedings upon the attachment are completed the fact that the Federal Court cannot complete such proceedings is not a reason for dismissing the action. * * * It is obviously not the purpose of the removal statutes to destroy a valid jurisdiction of the State Court" (p. 515).

(6.) All that has gone before, and all that follows, brings the case at bar distinctly within the principle above laid down.

Reilly *v.* Philadelphia & R. Ry. Co., 109 F. R., p. 349 (District Court, S. D., New York):

> "Under Code Civ. Pro., Section 432, providing that personal service of summons on a foreign corporation may be made, in the absence of the president, treasurer, or secretary, or any person designated by the corporation for that purpose, on 'the cashier, a director or a managing agent within the state,' provided the corporation has property within the state or the cause of action arose there, which provisions are applicable to suits in the Federal courts where the corporation does business in the state, and thereby impliedly assents to the conditions imposed by the statute, service of monition in a suit in admiralty in a district of New York for breach of a contract made in that state on a director of a foreign corporation found within the district, is a sufficient service on the corporation, where it has property within the state; and a leasehold interest in vessels within the state under a lease for the term of 49 years constitutes property, within the meaning of the statute."

In this case the authorities are reviewed at length. Golday *v. Morning News* is distinguished. It will again be noticed that in every feature the present case is much the stronger in favor of the jurisdiction. The case was not necessarily turned upon the possession by the defendant's company of property within this State; there are other controlling facts. But, if it did, is it not obvious that the continued ownership and operation of the manufacturing establishment at Niagara Falls, through the ownership of the entire capital stock of the subsidiary and dependent corporation created in a process of reorganization, is a much more substantial property interest than in a mere leasehold in some steamships?

To illustrate: Suppose the defendant company owned the entire capital stock of the New York Central Railroad and governed and operated the great corporation, would not the defendant company be doing business in the State of New York within any common sense construction of the statute?

(7.) *In re* Horst, 150 U. S., p. 653, it was held:

> " That a service upon the financial agent
> " of the corporation in the district, wherein
> " the corporation transacted chiefly its mon-
> " etary and financial business for this coun-
> " try, was a sufficient service upon the cor-
> " poration."

(8.) Meyer *vs.* Pennsylvania, &c., Company, 108 F. R., p. 169 (Circuit Court, W. D., New York):

> " The director has his permanent residence
> " at Rome, in this State. The cause of action
> " arose within the State. Moreover, I am of
> " the opinion that the company is doing busi-
> " ness within this State, and therefore a di-
> " rector of the defendant is a proper officer
> " upon whom service of the summons can be
> " effected."

This is another case directly in point. It is said in the opinion, distinguishing Goldey *v.* Morning News:

> " In that case the officer served was tem-
> " porarily within the jurisdiction of the State
> " of New York, and had no permanent resi-
> " dence or domicile therein."

In Revans *v.* Southern Missouri & A. R. Co., 174 Fed. R., 982, the head-note is as follows:

> " Where the president of a foreign railroad
> " corporation was resident in the State, and
> " had an office therein, in which he performed
> " his duties as such president, and had done
> " so for many years past, the service in an ac-
> " tion against the corporation arising without
> " the State on complainant within the State
> " was properly made upon such president."

Steamship Co. *v.* Kane (170 U. S., 100), which was a similar case is cited.

Now, if the residence of a president, who is merely an agent of the Board of Directors, is sufficient to give jurisdiction of a cause of action, arising without the State. How can it be said, that there is no jurisdiction when most of the directors reside within the State, when the whole board adopt the State as their business domicile, for all executive functions, and, moreover, the cause of action arose within the State?

IV.—IT IS SUBMITTED, FOR THE REASONS ABOVE STATED, THAT THE JUDGMENT OF THE CIRCUIT COURT SHOULD BE REVERSED.

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